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Public Encouragement of Monopoly in the Utility Industries

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IT is not the purpose of this brief article to discuss the soundness of the theory that industries which bear a peculiar relation to the public interest render more satisfactory service to their patrons if protected by the Government from competition. Nor is this the place to consider whether the present regulatory practices of the American states give the patron of the utility that assurance of value in return for price which is supposed to result when different groups are competing for a market. The intent of the following pages is to point out, in a general way, and with occasional illustrations what steps are taken and what things are done by the American states to create and foster monopolistic conditions in an industry which the courts hold to be "affected with a public interest."

The granting of exclusive franchises by the state legislature, however usual in the past, is no longer a common practice. The rôle of the local or municipal franchise in the creation and the furtherance of public service monopolies has been the subject of frequent and incisive scrutiny. No attention will be given here to these means of curtailing competition between utilities. The present article will concern itself with the devices by which the state public service commissions foster monopoly and with the statutes which direct the commissions toward that end.

APPROVAL OF INCORPORATION

The voice of the public service commission, as to whether there shall be competition or monopoly in the public service, is first heard when a person or

corporation undertakes to venture into a quasi-public activity. In a few states—Maine, Vermont and Pennsylvania, for example—the approval of the public service commission must be obtained before any public service corporation can be formed. Before the articles of incorporation are submitted to the secretary of state in Vermont, the Public Service Commission must "determine whether the establishment and maintenance of such corporation will promote the general good of the state." In order to determine whether the existence of an additional utility corporation will "promote the general good of the state," it is, of course, proper to inquire whether the proposed corporation would enter into competition with an existing operator, and whether any competition which would result would serve the public interest.

CERTIFICATE OF CONVENIENCE AND NECESSITY

A more familiar form of control, exercised at the very origin of competition, is the power of the commission to grant or refuse a certificate of convenience and necessity. It is a very common provision in state statutes that, until the public utility regulatory body gives its approval, no person or corporation may "begin the construction" of its plant, system or route; begin to "operate"; "transact any business"; or "exercise any franchise or right under any provision of the law." In determining whether or not to give its approval to the new public service project, the commission must find

whether it will serve the "public convenience and necessity." An accurate statement of just what utility enterprises must obtain the certificate of convenience and necessity in the various states could be made only after a careful study. It may be said, however, that in one state or another, certificates must be obtained by operators of steam and electric railways, sleeping cars, baggage and express services, motor common carriage, carriage by water, public water supply service, pipe lines, air transportation services, radio broadcasting, toll bridges, wharves, elevators, warehouses, stockyards, telegraphs, telephones, electric light and power, gas, steam heating, refrigeration and sewage disposal. In no one state is the certificate required for all of these enterprises, and in some states it is required for only a few. Nevertheless, in most of the industrial states—New Jersey, Pennsylvania and Illinois are good examples—the certificate is required of a wide range of utilities.

In deciding whether or not the instituting of a new service would serve the public convenience and necessity, no factor is more frequently the determinant than the question of whether the existing utility ought to be subjected to competition. Indeed, this would seem to be the major, if not the sole, consideration in some states which require no certificate for entrance into areas where there is no established service, but which do require a certificate in case the new enterprise should compete with an existing utility.

It is, of course, no easy task for the commission to decide whether the public interest will be best served by the additional facilities offered by the proposed new utility, or whether the public will profit more from the presence of an industry enjoying the financial stability which results from a protected monop-

oly. Few rules have been laid down and perhaps none of these is of universal application. The California Railroad Commission, early in its history, announced that utilities furnishing power and light in that state would not be subjected to competition if they were furnishing satisfactory service at reasonable rates. When the existing company proved unwilling or unable to satisfy this requirement, competing companies would be admitted.¹ This rule has been followed by a number of other states when dealing with electric companies.²

Other state commissions, however, have indicated that they will attempt to obtain an improvement in the service and rate schedule of the established electric company before admitting a competitor. At least two commissions, those of Missouri and Maine, have gone much further than this. A Missouri case will illustrate. A petition was before the regulatory commission of that state, asking for the grant of a certificate of convenience and necessity to permit the applicants to construct and operate an electric light and power plant and distributing system in a city which was already being supplied with electric service. The existing service was notoriously bad. The Public Service Commission had, on at least two previous occasions, ordered improvements in plant and operating practices, but without securing any considerable improvement. Popular opinion in the city, as indicated by the vote in a special election, was strongly in favor of permitting the petitioners to construct plant and wires in competition with the established company. The Commis-

¹ *Pacific Gas & Electric Co. v. Great Western Power Co.*, 1 Calif. R. R. Com. Reps. 203 (1912).

² Probably primarily in the western states. For support of the California Commission by an eastern state, see *Re Thompson* (Vermont), P. U. R. (1916) E, 232. Citations to P. U. R. refer to *Public Utilities Reports*.

sion, convinced that the public interest required the admission of the new company, still sought to avoid a duplication of equipment and the ineconomies of competition. A certificate was granted to the petitioners, but only on condition that they

purchase the plant and equipment of the existing company at such price as can be agreed upon by the parties, or, on failure to agree, at such price as shall be fixed by the Commission. Therefore, the applicant will be required to file a written offer with the Commission and with the Greenfield Light and Power Company [the existing company] on or before the effective date of the order herein offering to take over and pay for the property and equipment of the company used and useful in rendering service at Greenfield at the fair physical value thereof as a plant in operation to be fixed by the Commission. If within five days after receipt of such offer the Greenfield Light and Power Company shall file its written acceptance of such offer with the Commission and the applicant herein, the Commission will direct its engineers to inventory and appraise such property, and the Commission will thereupon fix the fair physical value thereof to be paid by the applicant.³

The Commission did not state what it would do in case the existing company should refuse to sell.

In the case of telephones, where the inconveniences of separate systems are, no doubt, greater than in the case of light and power, it is sufficient in perhaps no state for the one seeking a certificate to show that the existing

service is unsatisfactory or too costly. It must be shown, also, that the established company is incapable of improving its service. If an electric company would retain exclusive control of its territory it must, according to the California Commission, be always on good behavior. A telephone company, however, may rest on its oars, secure in the knowledge that before a competitor is allowed to enter, the commission will attempt to compel an improvement in its own service.⁴

There has been much less uniformity among the states, and much less consistency on the part of individual commissions, when considering applications to enter into competitive transportation service. New York furnishes an excellent example. In 1907, the regulatory commission refused a certificate of convenience and necessity for the operation of an inter-urban electric railway, offering as its reason for so doing that the cities and rural area in question were adequately served by existing steam carriers. On review of the action of the Commission, the Appellate Division of the state Supreme Court reversed the order and instructed the Commission to issue a certificate. The Court saw in the network of rails, which was already in use, evidence that it was the policy of the state to permit electric lines to parallel steam lines, even though the latter were furnishing adequate service.⁵ The advent of the motor bus, however, found the New York courts ready to accept a different view of the relation of competition to public convenience and necessity. The present attitude of Commission and judiciary is expressed in a recent Commission opinion:

³ *Re Ward*, P. U. R. (1922) D, 727, 733-34. For a similar decision by the Maine Commission see *Re Turner Light & Power Co.*, P. U. R. (1916) A, 418. After stating that "if practicable" an effort ought to be made to compel the established electric company to improve its service or lower its rates before permitting another company to offer competition, the Maine Commission issued a certificate to the applicants, subject to the condition that they purchase certain property from the established utility.

⁴ See, for example, *Wayne County Mutual Telephone Co. v. Commercial Telephone & Telegraph Co.* (Illinois), P. U. R. (1915) E, 673.

⁵ *In re Rochester, C., E., Traction Co.*, 118 App. Div. 521, 102 N. Y. S. 1112 (1907).

The courts and this Commission have consistently held that a certificate will not be granted [to a motor bus company] where the route competes with an existing transportation service and that existing transportation service furnishes adequate means of transportation.⁶

Where an application for a certificate of convenience and necessity is opposed, on the ground that the proposed operations would result in competition injurious to the service furnished by an established utility, the commission is presented with a very complicated question of fact. The extent to which an industry, not yet in operation, will detract patrons from an established business, is not subject to easy or accurate measurement. Nor is it a simple matter, once the extent of the competition is estimated, to determine whether the loss of patrons by the existing utility will so reduce its income as to prove subversive of the public interest. In very few cases, indeed, does it appear that the public service commission makes any effort, through its own staff, to uncover the data indicating the nature and the extent of the competition which would result from the granting of the certificate. It is the custom, rather, to depend on the counsel for the contending parties to disclose the evidence upon which the order of the commission will depend. In some cases the attorneys submit in testimony and in exhibits very comprehensive statistical analyses.⁷ An examination of briefs, exhibits and minutes of testimony filed with a great number of cases decided by the New York Public Service Commission indicates, however, that the counsel all too often attempts to establish its petition or opposition by offering in testimony the opinion of

parties interested in the operation or service of the contending utilities. Not infrequently these opinions are in such conflict that the order of the Commission represents little more than guess.

The foregoing pages have been concerned with the maintenance of exclusive or monopolistic control over service in a particular area, or over a specified route. The public service commission, in determining whether or not to issue a certificate of convenience and necessity, has also in many cases to decide whether it will encourage the creation of a large unified system serving many localities, or whether it will give preference to small concerns, each dominant in its own limited territory. This choice between policies is perhaps most often forced upon the commission when it is faced by two applicants for a certificate to enter a territory not already preempted by a utility. If only one of the two petitioners is to receive a certificate, the commission will ordinarily grant it to the one of the applicants thought to promise the better service to the public. As a consequence the large corporation, with its more specialized equipment and its greater reserves, usually receives the commission's approval. This is especially true of the telephone industry, since the large system can furnish connections with other localities which are not possible to the small and independent company.⁸

CONTROL OVER CAPITALIZATION

Public service commissions occasionally use their control over utility capitalization as a means of limiting competition between public service companies. In most of the states, the statutes which give the commission its

⁶ *Re Cooper*, Rep. N. Y. P. S. Com. (1927) I, 453, 456.

⁷ See, for example, *Re A. R. G. Bus Co.* (California), P. U. R. (1919) E, 232.

⁸ For an illustrative case see *Re Coles County Telephone and Telegraph Co.* (Illinois), P. U. R. (1918) A, 558.

authority over security issues list the purposes for which securities may be issued. Prevention of competition is rarely, if ever, included in the list. These provisions are usually interpreted to require the commission to approve any issue made in proper form which is for one of the purposes enumerated in the statute. Where this is true, it is very hard to see how authority to make an issue can be refused on the ground that the proceeds are to be devoted to a project which ought to be discouraged because it would unduly compete with another utility. Thus, the Indiana Public Service Commission, after refusing a certificate of convenience and necessity for the establishment of a telephone exchange on the ground that it would compete with an existing system, was none the less forced to approve the issuance of securities by which the company expected to realize the capital to establish that very exchange.⁹ On a later occasion, the Indiana Commission did refuse to approve an issue by a lighting company, offering as its reason that the proceeds were for an undesirable duplication of the system of a competing company. This interpretation of the Commission's authority was rejected by the Supreme Court of the state when it approved a mandamus instructing the Commission to authorize the issue. The Court stated that it was not the duty of the regulatory body to inquire whether the income from the issue was to be invested in a way to best serve the public good. The statute intended merely for the Commission to inquire whether the proposal for the issue was presented in proper form, and whether the money was to be invested for one of

the purposes enumerated in the statute.¹⁰

In a few of the states, the discretion of the commission to refuse to permit the issuance of securities is not so strictly limited. Some statutes—for instance, those of New Jersey and North Dakota—merely state that no securities may be issued without the approval of the public service commission, no indication being given as to what are proper grounds for refusal. The Alabama Commission is to give its approval to an issue only if it finds that the purpose for which the money is to be spent is “compatible with the public interest.”¹¹

In the states where the authority of the commission over capitalization is granted in very broad terms, or has been loosely construed, there has been some evidence that this power will be used to curb what the commission believes to be undesirable competition. This is illustrated by at least one order of the Michigan Public Utilities Commission. Two competing motor bus operators having applied to the Commission for approval of articles of incorporation and for permission to issue securities, this body inquired very carefully into the business conduct of the applicants, and learned that they were engaged in bitter competition. After describing these competitive practices of the two operators in its

¹⁰ *Public Service Commission of Indiana v. State ex rel. Merchants' Heat & Light Co.*, 184 Ind. 273, 111 N. E. 10 (1916). For a similar interpretation of the New York statute, see *People ex rel. Long Acre Electric Light & Power Co. v. Public Service Commission*, 137 App. Div. 810, 122 N. Y. S. 641 (1910).

¹¹ The constitutionality of this very general provision was asserted by the state Supreme Court in *Alabama Public Service Commission v. Mobile Gas Co.*, 213 Ala. 50, 104 So. 538 (1925). A similar grant of authority in the New Hampshire statute seems to have been interpreted to allow very little discretion to the Commission. *Re Concord Gas Light Co.*, P. U. R. (1921) C, 169.

⁹ *Re Farmer's and Merchant's Coöperative Telephone Co.* (Indiana), P. U. R. (1915) B, 55. See also *Re Peoples' Telephone Co.* (Nebraska), P. U. R. (1915) D, 160; and *In re Mahoning County Light Co.* (Ohio), P. U. R. (1915) A, 74.

written opinion, the Commission expressed regret that it did not have power to dispose of the less desirable of the two by denying it a certificate of convenience and necessity. It achieved the same end, however, by allowing only one of the applicants to make a capital issue, the rejection of the other petition being put on the ground that, under the present conditions of operation, the securities would represent a very questionable investment to purchasers.¹² The New Jersey Board of Public Utility Commissioners has been even more frank in using its control over capitalization to foster monopolistic conditions. It should be noted that this is done not so much on the ground that consumers receive better service when one operator dominates the field, as on the ground that the probable earnings of the company would not assure to the investors the return which they had anticipated. An illustration can be found in a comparatively recent case, in which the Board refused to authorize the issue from which an electric concern intended to finance a lighting and power project in an area already occupied by another company. In the course of the opinion, it was said:

The question to be determined by the Board is whether the approval of the "purpose" of such stock issue by the applicant will result in a supply of electrical energy under the best conditions and at the lowest rates which will assure a continuity of service. . . .

It is the duty of this Board to pass not only upon the legality of a financial proposition advanced but upon the merits of the subject matter itself from the standpoint of a wise public policy, having for its object the safeguarding of the public against ill-considered and reckless financial ventures, the securities of which might entail loss on the public investing therein.¹³

¹² *Re Himburg*, P. U. R. (1922) C, 440.

¹³ *Re Community Power & Light Co.*, P. U. R. (1926) A, 536, 543.

CONSOLIDATION, MERGER AND SALE

Probably no regulatory power of the public service commission has received less attention from writers than the authority to supervise the transfer and the combination of public utility property.¹⁴ The primary objectives of public utility regulation, the assurance of satisfactory service at fair rates and the protection of the investor, doubtless seem to a great many people too far removed to be causes for concern as to the identity and the corporate structure of the owning interests. Consequently, it is not surprising to learn that the legislative enactments of the forty-eight states reveal no common attitude concerning the desirability of concentration of control over utilities, whether competing in the same or serving widely separated territories.

In some of the states—Oregon, Florida and Vermont are examples—all utilities other than railroads are virtually free to purchase, sell and combine as they see fit.¹⁵ Motor buses, subject to regulation as to rates and service in nearly every state, are in many states entirely uncontrolled as to consolidation, merger and sale. Some legislatures are willing for scattered holdings to be collected under one management, but forbid the combination of competing utilities. This is true of railroads in a great number of states, and of telephones and telegraphs in Pennsylvania.¹⁶ Still other states take quite a different position. Thus, the Indiana and the Alabama statutes

¹⁴ A recent article by W. M. Wherry, entitled "Principles Applicable to Consolidation and Merger of Public Utilities," appeared in *New York Univ. Law Rev.*, 6: 143 (1929).

¹⁵ But see *Re Union County Telephone Co.* (Oregon), P. U. R. (1920) C, 1002.

¹⁶ Constitution of Pennsylvania, Article XVI, Section 12, and *Cochran Telephone Co. v. Petroleum Telephone Co.*, 263 Pa. 506, 107 Atl. 23 (1919).

encourage the consolidation of any railroads which could be operated as a single system.

Still other legislative enactments—and, if we omit railroads from consideration, a number of states are included in this category—make no pronouncement of policy, but give the regulatory commissions a free hand to formulate and carry out their own ideas as to transfer and coördination of utility property. Perhaps in no other phase of regulatory activity is the grant of power to the commission made in such unqualified fashion as one finds in some of the provisions conferring control over consolidation, merger and sale. In view of the care with which the statutes enumerate the purposes for which securities may be issued, one wonders at the lack of assurances that the commission will not go beyond the proper bounds of public authority in regulating ownership and control.

Apparently very few commission orders concerning consolidation, merger and sale have gone to the courts for review. Accordingly, one must depend almost altogether upon the opinions of the commissions themselves for interpretations as to the extent of administrative authority under these broad and unqualified grants of power. The conviction that competition for the same patronage means the very defeat of satisfactory public service is expressed in a number of opinions, the following being representative:

This Department has, at all times, encouraged the consolidation of all utilities rendering the same kind of service and serving the same city, town or community in this state, and we believe that consolidation should be effected wherever possible. . . .

There is no power vested in this Department, nor any other state department, whereby it could by order or otherwise direct a consolidation, however much it might desire to do so. Lacking the power

to order, all we can do is to recommend; and we do respectfully recommend that the city commissioners and the companies enter upon negotiations with a view to accomplishing this desired result.¹⁷

Like the Washington Department in the above quotation, a number of commissions have pointed out that they possess no authority to order a consolidation of competing properties, a source of regret to at least one commission.¹⁸ But, while the commissions may not order the sale or consolidation of utilities, they may lend their influence, and perhaps a bit of pressure, to induce an arrangement which would terminate subversive competitive practices.¹⁹ Perhaps the strongest evidence that the regulatory authorities are convinced of the desirability of monopoly control over service in any locality lies in the fact that there are in the published cases so few instances in which a commission has disapproved of the consolidation of competing companies.

It is not so easy a matter to convince the public service commission that it should approve a sale, consolidation or merger when the purpose is to unite non-competing properties into one large system. As the statutes now read, there is very little specification as to what factors should determine the order of the commission's allowing or refusing to allow the petition to purchase, merge or consolidate. The Maryland Commission for a time refused to approve of any transfers of

¹⁷ The Washington Department of Public Works, in *City of Spokane v. Washington Water Power Co.*, P. U. R. (1921) D, 762, 772, 773.

¹⁸ The Nebraska Commission in *Blackledge v. Farmers' Independent Telephone Co.*, P. U. R. (1919) D, 211, 224. The Commission expressed the opinion that it would not be unconstitutional for the legislature to confer upon the Public Service Commission authority to order consolidations.

¹⁹ See the Illinois case of *Rockton Electric Co. v. South Beloit Water, Gas & Electric Co.*, discussed below and cited in note 29.

utility plants or systems, except upon affirmative evidence showing that the public, as well as the applicants, would realize positive benefit from the change of ownership or management. This policy finally went to the courts for review in 1928. In refusing one electric company permission to purchase four other electric utilities, the Commission stated that the reasons advanced by the petitioner as justifying the approval of their project did not

seem sufficient, in the view of the Commission, to justify it in granting the privileges sought in the application. It cannot see wherein the public will be benefited in the slightest degree. . . . The only consideration seems to be one of financial investment, the only persons to be really benefited being the seller and the purchaser. This Commission can see no advantage whatever to the public in the proposed transaction and the application is, therefore, denied.²⁰

This order, refusing approval of the proposed purchase and sale, was immediately taken to the courts for review. It was argued that the intent of the statute was that the Commission should always give its approval to applications for purchase and sale, unless it should appear that the transfer of ownership would prove detrimental to the public interest. There was nothing in the statute to guide the court. There was no provision that the Commission should give reasons for its order approving or refusing approval of the project of the applicants. The law merely stated that no sale of utility property should be made "without the written consent of the Commission." The court, with-

out giving any particular attention to the constitutionality of the statute, decided that the Commission had exceeded its authority in withholding its approval for lack of proof that the public would benefit from the proposed transaction. The exact reason for so deciding was not given by the court, but it announced the opinion that permission to a transfer could be refused by the Commission only on a finding that the transaction would be detrimental to the public.²¹ The effect of this decision remains to be seen. The New York Public Service Commission has announced that it will ignore the decision of the Maryland court and will continue to refuse its approval to consolidations of utility properties, except on affirmative evidence that the public will benefit by the proposed change. The Maine Commission, in a decision and opinion of June, 1929, intimates that it will follow the New York, rather than the Maryland, rule.²²

For the most part, the commissions seem to be quite ready to give consent to the sale and the merging of non-competing utilities. An illustration of this willingness to acquiesce in the concentration of control in the hands of a few large corporations is found in some recent words of the New Jersey Board of Public Utility Commissioners:

The merger of smaller electric light and gas companies into larger units appears to be in accordance with the trend of the times and should result in more economical operation and consequent benefit to the public. Furthermore the interconnection of the group of properties as proposed is a

²⁰ *Re Electric Public Utilities Co.*, P. U. R. (1927) E, 609, 616. The California and Pennsylvania Commissions appear to have acted upon the same understanding of their duties in *Re Greer* (California), P. U. R. (1922) B, 49, and *Re Lawrence Hydro-Electric Co.* (Pennsylvania), P. U. R. (1927) C, 78.

²¹ *Electric Public Utilities Co. v. West*, 140 Atl. 840 (1928).

²² *Re Consolidated Gas Co. of New York* (New York), P. U. R. (1928) E, 19, 35; and *Re Eastport Water Co.* (Maine), P. U. R. (1929) E, 136, 157-58.

logical step in the development of any super-power system.²³

On the other hand, there have been a number of cases in which the commissions were convinced that the public stood to lose in service or rates if the proposal for a combination of non-competing properties should be permitted. Two cases will illustrate. The Indiana Public Service Commission was faced by the application of a group of bankers and lawyers to purchase three small telephone systems. While the three properties were neighboring and would lend themselves to unification, there was ample proof in the evidence before the Commission that the applicants were interested purely in the exploitation of the property and not in supplying a service. In refusing to allow the purchase, the Indiana Commission, noted for speaking in clear and forceful language, announced a policy of telephone control which would extend much beyond the immediate application before them.

The real owners of the properties will not be the executive officers, or the people of the community, but will be the holders of the securities, perhaps many of whom reside in distant states, and who will neither know nor care as to the quality of service rendered so long as the interest on their investments is promptly paid. . . .

The history of the telephone industry does not disclose that the consolidation of plants widely scattered when brought under one unified management renders the service any cheaper or more efficient. . . .

It may be that we have reached a place in the telephone history of the country when the small telephone systems must pass out of the picture, and that there should be substituted therefor large telephone corporations consolidating all the small companies and operating through subsidiary companies, but this Commission is not yet ready to embrace this theory. If such consolidation is required by the needs of

any particular community, it must be done by experienced operators, on a reasonable value and sound financial basis.²⁴

The Pennsylvania Commission announced a not dissimilar policy in respect to efforts to buy up and to consolidate scattered water companies. After assuring the applicants that it was not inimical to the current trend toward centralized control, the Commission went on to say:

But in this instance, however, the Commission is strongly of the opinion that there is absence of economic reason, under such conditions as are presented in these applications, for the merging into one company of widely separated, and physically uncoordinated water utilities in various parts of the state. There is material difference between water companies and other public utilities. For instance, it is obvious that it is not only advisable but absolutely necessary for the development of the electric industry and the service of the public to effectuate consolidations of electric companies when the circumstances are such as will result in betterment of service or reduction of rates. In the case of other utilities, similar conditions favorably affect consolidation. But the Commission fails to see, at least under such facts and circumstances as are presented in these applications, how it is possible to coördinate public service, or effect any substantial economic advantages, in tying together widely separated water companies which cannot possibly have any physical interconnection, and which have little or no corporate, financial or community relationship. The supply and service of water is, in the experience of communities large and small, a peculiarly localized function and necessity, and conditions of ownership, management, finances and service vary to a degree which is not nearly so marked among other public utilities.²⁵

²⁴ *Re Associated Telephone Co.*, P. U. R. (1927) C, 577, 584, 585, 586.

²⁵ *Re Pennsylvania Water Service Co.*, P. U. R. (1927) E, 656, 664-65. For a comprehensive statement of the attitude of the Maine Public Utilities Commission toward consolidation of

²³ *Re Jersey Central Power & Light Co.*, P. U. R. (1925) D, 699, 701.

CONTROL OVER UTILITY SERVICE

The authority of the public service commission to require utilities to furnish adequate and convenient service ordinarily includes the power to pass upon the advisability of extensions of lines or system into new territory.

It is quite common to find in statutes that a utility may not extend its service into an area which it had not previously elected to serve, except with the consent of the public service commission. This consent or approval, if given, usually takes the form of a certificate of convenience and necessity, more properly considered in an earlier section of this article. In Wisconsin, however, the control of the Commission over extensions of telephone lines is more inclusive than that ordinarily contemplated in the power to issue or refuse a certificate of convenience and necessity. The legislature of that state, through the enactment of an anti-duplication law, announced very definitely a state policy against competition between telephones. The Railroad Commission was given very thoroughgoing control over extensions of lines and the tapping of districts not previously served. In the exercise of its duty to prevent competition, the Wisconsin Commission is often called upon to hear the pettiest of controversies between telephone companies. The following not unrepresentative cases will illustrate. An individual living in the village of Hubbard expressed a desire for the service of the Hubbard Farmers Telephone Company in preference to that of another company which was operating in the same village. The reasons for this choice were, first, that he was a stockholder in the Hubbard Company and, second, that the com-

peting company had, at a previous date, aggrieved him by refusing to run a wire to his farm house. But, in the present case the Hubbard Company, which he preferred, could instal service only by running a wire some ten or fifteen yards from the main line to his house. The competing company's wires, on the other hand, ran directly in front of his door. An appeal was made to the Railroad Commission to determine whether the preferred company should be permitted to make this short penetration into the territory of its competitor.²⁶

Another problem coming before the Wisconsin Commission involved the territorial rights of two telephone companies having their lines about equidistant from a farm house over which they were in dispute. One of the companies had furnished service to a previous occupant of this house, but on the vacating of the premises the instrument was taken out. The new occupant sought and obtained service from the competing company. In running its wires up to the house, this telephone company made use of the same poles which had been used by its competitor in serving the previous occupant. The company which had previously furnished the service then came before the Railroad Commission, arguing that its territory had been invaded and urging that the duty of the Commission to prohibit uneconomical competition between telephone companies required an order ousting its competitor from the extension.²⁷

²⁶ *Re Hubbard Farmers Telephone Co.*, P. U. R. (1916) C, 435. The Commission refused to allow the extension.

²⁷ *Wonewock Telephone Co. v. La Salle Telephone Co.*, P. U. R. (1915) C, 740. The Commission refused to oust the defendant. For a case in which the Wisconsin Commission ordered the abandonment of an extension, on the ground that it was an invasion of the territory of a competitor, see *In re Grange Hall Farmers' Telephone Co.*, P. U. R. (1915) E, 594.

various kinds of utilities, see *Re Eastport Water Co.*, cited in note 22.

Excepting the control of the Wisconsin Railroad Commission over duplication of telephone systems, one finds very little evidence that the state regulatory bodies use their power to control service as a means of fostering monopolistic conditions among public utilities. Occasionally a commission, hearing a complaint from a public service company that a competitor has invaded its territory without a certificate of convenience and necessity, orders the interloper to abandon its new project.²⁸ The Illinois Commission on one occasion, when faced by such a situation, directed the complainant to take over the wires of the invading company. This order was opposed by the invader, on the ground, among others, that the complainant was not in a position to furnish adequate and satisfactory service throughout the territory it was claiming as its own. In reply to this charge, the Commission announced that if this allega-

tion proved to be true, it would not only require the complainant to surrender the property which it was here directed to take over, but it would entitle the application by its competitor for a certificate "authorizing it to take over and operate the whole of the distribution system" in the disputed territory.²⁹

CONCLUSION

The present article will doubtless seem incomplete if it closes without some effort to indicate the relative importance of legislative and commission policy in the encouragement of monopolistic conditions among utilities. Any effort to appraise the influence of the various devices above described for curtailing public service competition ought to be predicated upon a much more careful study of statutes, court decisions, commission orders and utility practice than the writer has attempted. The foregoing pages must be accepted as a crude sketch, intended to inform the layman of the existence of a very important, but much overlooked, form of social planning.

²⁹ *Rockton Electric Co. v. South Beloit Water, Gas & Electric Co.*, P. U. R. (1921) E, 17. The Commission did not discuss its statutory power to make such orders.

²⁸ A case is *Northern Illinois Telephone Co. v. Farmers' Telephone Co. of Sandwich* (Illinois), P. U. R. (1916) E, 1090. In *California-Oregon Power Co. v. Keno Power Co.*, P. U. R. (1918) D, 851, the Oregon Commission denied that it possessed such authority. See, also, *Lakewood & Coast Electric Co. v. Atlantic Coast Electric Light Co.* (New Jersey), P. U. R. (1917) A, 695.



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